CANCELLED

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Criminal Appeal No. 2 C /2002

APPLICANTS

1. Khagesh @ Khageshwar
S/o. Laxmi Narayan Manikpuri
Aged abt. 20 years
R/o. Bavly Kuan, at Baikunthpur
Raigarh (C.G.)

2. Santosh Yadav, S/o. Ramesh Kumar Yadav.
Aged abt. 24 years, at Baikunthpur,
Rambhata, Raigarh(C.G.)

3. Avinash Sahu @ Jagdish, S/o. Deoram Sahu
Aged abt. 25 years, R/o. Village Salhe,
P/S. Sarangarh, Distt. Raigarh (C.G.)
At present – Chhote Atermuda,
Chakradhar Nagar, Raigarh (C.G.)

VERSUS

NON-APPLICANT

State of Chhattisgarh through
Scheduled Caste Welfare Thana
Raigarh (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE 1973

(35) (47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.726/2002

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Khagesh @ Khageshwar & others

Versus

State of Chhattisgarh

Shri D.R.Sharma, Senior Advocate with Shri K.N.Nande, Advocate & Shri B.D.Badgayan, Advocate for the appellants.
Shri Ashish Shukla, Govt. Advocate for the State

ORAL JUDGMENT

(Delivered on 25th day of April 2006)

This appeal is directed against the judgment dated 12-06-2002 delivered by Shri A.L. Nimonkar, Special Judge, Raigarh in Special Criminal Case No.35/2000 whereby the appellants were convicted under Section 354 read with Section-34 of I.P.C. and were sentenced to undergo rigorous imprisonment for 6 months and to a fine of Rs.500/- each and in default to undergo additional R.I. for 1 month.

2. Briefly stated the prosecution story is that on 09-03-2000 the prosecutrix was returning home on her bicycle at about 5 P.M. When she reached the bridge in between the Loing & Kotrapali, the appellants abused her taking the name of her caste and outraged her modesty by pressing her breasts. Upon receiving shouts of the prosecutrix, Avdhoot PW-7, Dhobaram PW-9, Indra lal PW-2, Ishwar Pradhan PW-3 and Kripa Ram rushed to the spot. On seeing the witnesses arrive, the appellants pushed the prosecutrix under the canal and ran away. Santosh Kumar & Khagesh were apprehended by the witnesses. A prompt F.I.R. was lodged on 09-03-2000 at 07.40 P.M. by the prosecutrix at Police Station-Chakradhar Nagar situated at 8 K.M. east from the place of occurrence. On medical examination Dr. D.K.Toppo PW-13 did not find any external injury on her

person but noticed that the prosecutrix complained of pain on her back and also below the right shoulder. After completion of investigation, the appellants were prosecuted under Section-3(1)(XI) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act., 1989) and under Section-354 read with Section-34 of the IPC.

3. The appellants abjured the guilt and led no evidence. The prosecution examined as many as 13 witnesses. Relying upon the testimony of the prosecutrix which was dully corroborated by witnesses Inder lal PW-2, Ishwar Pradhan PW-3, Avdhoot PW-7, Mahendra Singh PW-11 as also Dr. D.K. Toppo PW-13, the trial Judge convicted and sentenced the appellants as aforesaid in para-1. (Supra). The appellants were acquitted of the charge under Section- 3(1)(XI) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act., 1989).

3. Shri D.R.Sharma, learned Senior Advocate appearing on behalf of the appellants argued that the prosecutrix has not specifically mentioned in her testimony as to which of the appellants had pressed her breasts. So far as, the testimony of Inder lal PW-2, Ishwar Pradhan PW-3, Avdhoot PW-7 and Dhoba Ram PW-9 is concerned, it was argued that these witnesses did not see the occurrence and reached the spot subsequently. Referring to the testimony of Dr. D.K.Toppo PW-13, it was contended that no external injury was found on the prosecutrix. On the above premises, it was argued that the testimony of the prosecutrix is not worth placing credence and the appellants are entitled to be acquitted. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

4. Having considered the rival submissions, I have perused the record of Special Criminal Case No.35/2000. The testimony of the prosecutrix clearly shows that while she was returning home on her bicycle on

09-03-2000 in the evening, the appellants had intercepted her near the bridge in between the Loing-Kotrapali and abused and outraged her modesty by pressing her breasts. Upon hearing the shouts of the prosecutrix, all the witnesses Inder lal PW-2, Ishwar Pradhan PW-3, Avdhoot PW-7, Dhoba Ram PW-9 and Kripa Ram arrived. She was pushed by the appellants near the bridge and sustained some injuries. It is pertinent to note here that in cross-examination nothing has been elicited to show that the prosecutrix bears any grudge against the appellants or had any motive to falsely implicate them. Her testimony that the appellants had jointly intercepted her and outraged her modesty by pressing her breasts is unrebutted. Not only this Inder lal PW-2, Ishwar Pradhan PW-3, Avdhoot PW-7, Dhoba Ram PW-9 also corroborated her testimony by stating that on hearing the shouts of the prosecutrix, they reached the spot and saw that the prosecutrix had fallen under the bridge. Dhoba Ram PW-9 has also stated that he saw the appellants standing there. He has further stated that the prosecutrix told him that the appellants had abused her. Inder lal PW-2 has also corroborated the testimony of the prosecutrix by stating that the appellants had pressed her breasts. Besides the above, the testimony of Mahendra Singh PW-11, brother of the prosecutrix also fully corroborated the version of the prosecutrix by deposing that on 09-03-2000 the prosecutrix had on returning home told him that near the canal bridge, four boys had abused her and pressed her breasts. The testimony of Dr.Toppo PW-13 also corroborated the testimony of the prosecutrix since he noticed that the prosecutrix was complaining of pain in the back and below the right shoulder. No evidence was led by the appellants in defence.

5. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the offence under Section-354 read with Section-34 of IPC has been brought home against the appellants beyond the shadow of any doubt. So far as the sentence

awarded by the learned trial Judge is concerned, considering the nature of offence, no interference is called for.

7. In the result, the appeal being devoid of merit is dismissed. Perpetual warrant of arrest be issued against the appellant Avinash Sahu @ Jagdish and sent to Chief Judicial Magistrate, Raigarh along with a copy of this judgment with a direction to send the appellant Avinash Sahu @ Jagdish to Jail after arrest to undergo sentence as ordered by this Court. Appellants Khagesh and Santosh Yadav who are in jail, shall undergo the remaining sentence.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Tumane